PEGUAM NEGARA & ORS

v.

GEOFFREY ROBERTSON

FEDERAL COURT, KUALA LUMPUR
MOHAMED DZAIDDIN CJ
ABDUL MALEK AHMAD FCJ
SITI NORMA YAAKOB FCJ
[CIVIL APPEAL NOS: 02-11-2001(W), 02-12-2001(W), 02-13-2001(W), 02-14-2001(W), 02-15-2001(W), 02-16-2001(W), 02-17-2001(W), 02-18-2001(W)]
24 APRIL 2002

LEGAL PROFESSION: *Admission - Ad hoc - Queen's counsel - Whether Bahasa Malaysia (national language) requirement under s. 11(2) Legal Profession Act 1976 should be satisfied - Effect of opening words "Notwithstanding anything contained in this Act" in s. 18(1) - Whether s. 11(2) requirement excluded - Whether only requirements under sub-s. (1)(a) & (b) of s. 18 should be satisfied*

STATUTORY INTERPRETATION: *Construction of statutes - Purposive approach - Ad hoc admissions under s. 18 Legal Profession Act 1976 - Whether Parliament intended s. 18 to be subjected to s. 11(2) Bahasa Malaysia (national language) requirement*

The respondent, a Queen's Counsel who was neither a citizen nor a permanent resident of Malaysia, had applied, under four separate motions, to the High Court in Malaya for an *ad hoc* admission as an advocate and solicitor under s. 18(1) of the Legal Profession Act 1976 ('LPA'). The admission was sought for the purpose of representing one Raphael Pura in four defamation actions brought against the said person by the second, third, fourth and fifth appellants. The applications were based on the ground that the respondent possessed special qualifications and experience of a nature not available amongst advocates and solicitors in Malaysia. The Bar Council and the Kuala Lumpur Bar Committee supported the applications. The High Court, however, dismissed the applications, but on appeal, the respondent was successful by a majority decision in the Court of Appeal. Hence the appellants' appeals before the Federal Court on the following question, *ie*, whether s. 11(2) LPA must be fulfilled for admission as an advocate and solicitor to the High Court in Malaya under s. 18 LPA.

Held:
Per Abdul Malek Ahmad FCJ

[1] By virtue of the definition of "qualified person" under s. 3 LPA, a qualified person must fulfil the requirements of s. 11(1), and since 1 January 1984 the requirement in s. 11(2) as well, in order to be admitted as an advocate and solicitor. (p 501 h)

[2] Though the words "qualified person" is not used in s. 18 LPA, and instead only the words "any person" is used, that does not mean that a person applying under s. 18 need not be a qualified person. The person who applies under special circumstances pursuant to s. 18 must be a qualified person. For that very reason the words that follow after "any person" namely, "who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted" have been used to denote that that person must be a qualified person as only a qualified person who is a citizen of, or a permanent resident in, Malaysia would be eligible to be admitted under s. 11. Those words have been included to emphasise that s. 18 is intended for a qualified person who is neither a citizen nor a permanent resident of Malaysia. (p 502 a-b)

[3] This court disagreed with the dissenting judgment of the Court of Appeal that the purpose of the amendment to s. 18 LPA was because of the new s. 11(2). Malaysian citizenship or permanent residence is only one of the requirements of s. 11(1) and this condition alone does not make the qualified person defined in s. 3 eligible to be admitted as an advocate and solicitor. Further, the definition in s. 3 has left out the necessity of being a citizen of, or permanent resident in, Malaysia and by reason thereof the words "if he was a citizen of, or a permanent resident in, Malaysia" has been included in s. 18. (p 502 d-g)

[4] The words "Notwithstanding anything contained in this Act" in s. 18 LPA clearly exclude the application of s. 11. The only requirements for the applicant under s. 18 are those stated in sub-s. (1)(a) and (b) of that section. (pp 502 b & 503 a)

[5] If it was the intention of the Legislature to make a non-Malaysian qualified person who applies under s. 18 to fulfil the requirements of s. 11(2) when s. 18 came into force, then the LPA would have expressly stated so, and so would have the explanatory statements to the bill amending the LPA. (p 503 c-f)

[6] Based on the above considerations, the application of s. 11 LPA in particular s. 11(2), to a non-Malaysian qualified person does not arise. All he has to fulfil are the requirements stated in s. 18, a view fortified by

the inclusion of the opening words of that section. Therefore, this court agreed with the majority view of the Court of Appeal, having answered the question posed in the negative. (p 503 g-h)

[Appeals dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden, seorang Peguam Diraja yang bukannya seorang warganegara ataupun pemastautin tetap Malaysia, telah memohon, di bawah empat usul yang berasingan, kepada Mahkamah Tinggi di Malaya untuk satu kemasukan *ad hoc* sebagai seorang peguambela dan peguamcara di bawah s. 18(1) Akta Profesyen Undang-Undang 1976 ('LPA'). Kemasukan tersebut telah dipohon bagi tujuan mewakili seorang yang bernama Raphael Pura dalam empat tindakan memfitnah yang dimulakan terhadap orang tersebut oleh perayu-perayu kedua, ketiga, keempat dan kelima. Permohonan-permohonan tersebut adalah berdasarkan alasan bahawa responden mempunyai kelayakan khas dan sifat pengalaman yang tiada di kalangan peguambela dan peguamcara di Malaysia. Majlis Peguam dan Jawatankuasa Badan Peguam Kuala Lumpur telah menyokong permohonan tersebut. Mahkamah Tinggi, namun begitu, telah menolak permohonan tersebut, tetapi setelah dirayui, responden telah berjaya atas keputusan majoriti dalam Mahkamah Rayuan. Oleh itu rayuan perayu-perayu di hadapan Mahkamah Persekutuan atas persoalan-persoalan yang berikut, iaitu, sama ada s. 11(2) LPA seharusnya dipenuhi untuk kemasukan sebagai seorang peguambela dan peguamcara ke Mahkamah Tinggi di Malaya di bawah s. 18 LPA.

Diputuskan:
Oleh Abdul Malek Ahmad HMP

[1] Menurut definisi "orang yang berkelayakan" di bawah s. 3 LPA, seseorang yang berkelayakan mestilah memenuhi syarat-syarat s. 11(1), dan sejak 1 Januari 1984 syarat-syarat di dalam s. 11(2) juga, demi untuk dimasukkan sebagai seorang peguambela dan peguamcara.

[2] Meskipun perkataan "orang yang berkelayakan" tidak digunakan di dalam s. 18 LPA, dan sebaliknya perkataan-perkataan "sebarang orang" digunakan, itu tidak bermakna bahawa seseorang yang memohon di bawahya s. 18 tidak semestinya merupakan seorang yang berkelayakan. Orang yang memohon di bawah keadaan-keadaan khas selaras dengan s. 18 mestilah merupakan seorang yang berkelayakan. Atas alasan itu perkataan-perkataan yang berikutnya selepas "sebarang orang" iaitu, "yang mana, jika ianya merupakan seorang warganegara, atau pemastautin tetap, Malaysia, layak dimasukkan" telah digunakan untuk menunjukkan bahawa orang itu mestilah berkelayakan kerana hanya seorang yang berkelayakan

dan merupakan warganegara, atau pemastautin tetap di Malaysia boleh dimasukkan di bawah s. 11. Perkataan-perkataan itu telah dimasukkan demi untuk menekankan bahawa s. 18 adalah diniatkan untuk orang yang berkelayakan yang bukannya seorang warganegara mahupun pemastautin tetap Malaysia.

[3] Mahkamah tidak bersetuju dengan penghakiman bertentangan Mahkamah Rayuan bahawa tujuan pindaan kepada s. 18 LPA adalah disebabkan oleh s. 11(2) yang baru. Kerakyatan Malaysia atau pemastautin tetap adalah satu-satunya syarat s. 11(1) dan syarat ini sahaja tidak menjadikan orang yang berkelayakan yang ditakrifkan dalam s. 3 sebagai layak untuk dimasukkan sebagai seorang peguambela dan peguamcara. Selanjutnya, definisi di dalam s. 3 telah mengecualikan keperluan menjadi seorang warganegara, atau pemastautin tetap Malaysia dan oleh itu perkataan-perkataan "jika beliau merupakan seorang warganegara, atau pemastautin tetap, di Malaysia" telah dimasukkan dalam s. 18.

[4] Perkataan-perkataan "Tanpa menghiraukan apa-apa yang terkandung di dalam Akta ini" dalam s. 18 LPA dengan jelasnya mengecualikan pemakaian s. 11. Satu-satunya syarat untuk pemohon di bawah s. 18 adalah yang dinyatakan di dalam seksyen kecil (1)(a) dan (b) seksyen itu.

[5] Jika ianya merupakan niat Perundangan untuk menjadikan seorang berkelayakan yang bukan rakyat Malaysia yang memohon di bawah s. 18 untuk memenuhi syarat-syarat s. 11(2) apabila s. 18 berkuatkuasa, maka LPA tentunya telah dengan jelas menyatakan sedemikian, dan juga akan mempunyai pernyataan penjelasan kepada rang undang-undang yang meminda LPA tersebut.

[6] Berdasarkan pertimbangan yang dinyatakan di atas, pemakaian s. 11 LPA khususnya s. 11(2), kepada seorang berkelayakan yang bukan rakyat Malaysia tidak berbangkit. Apa yang perlu beliau penuhi adalah syarat-syarat yang dinyatakan di dalam s. 18, suatu pandangan yang diperkukuhkan oleh kemasukan perkataan pembukaan seksyen itu. Oleh itu, mahkamah ini bersetuju dengan pandangan majoriti Mahkamah Rayuan.

[Rayuan ditolak.]

Legislation referred to:
Advocates and Solicitors Ordinance 1947, s. 8A
Legal Profession Act 1976, ss. 3, 11(1), (2), 18(1)(a), (b)

For the 1st appellant - Abdul Aziz Abdul Rahim SFC (Nizam Zakaria); A-G's Chambers
For the 2nd, 3rd, 4th, & 5th appellants - V Sivaparanjothi (Rutheran Sivagnanam & Wong Hee Them); M/s V Siva & Partners
For the respondent - Muhammad Shafee Abdullah (Azhar Azizan Harun & Karina Wong); M/s Shafee & Co
For the Kuala Lumpur Bar Committee - Gauri Kumarashwaran
For the Bar Council - Edmund Bon

[Appeal from Court of Appeal; Civil Appeal Nos: W-02-810-1999, W-02-811-1999, W-02-812-1999 & W-02-813-1999]

Reported by Usha Thiagarajah

JUDGMENT

Abdul Malek Ahmad FCJ:

On 16 June 1999, the respondent, who is not a citizen of, or a permanent resident in, Malaysia had applied for ad hoc admission to practise as an advocate and solicitor of the High Court Malaya under s. 18(1) of the Legal Profession Act 1976 (hereinafter "the LPA") for the purpose of acting as leading counsel for the defendant Raphael Pura in four defamation actions instituted by the second, third, fourth and fifth appellants against him.

The said s. 18(1) of the LPA reads:

> 18. **Admission in special cases.**
>
> (1) Notwithstanding anything contained in this Act, the Court may, for the purpose of any one case and subject to the following subsections, admit to practise as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court and no person shall be admitted to practise as an advocate and solicitor under this subsection unless:
>
> (a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and
>
> (b) he has been instructed by an advocate and solicitor in Malaysia.

The grounds supporting the said application were that the respondent possessed special qualifications and experience of a nature not available amongst advocates and solicitors in this country although the respondent's affidavit did not state in detail the unusual or difficult issues which would arise in the suits and that he was conversant with the Federal Constitution. The Bar Council had affirmed an affidavit through its Secretary strongly supporting the application while the Kuala Lumpur Bar Committee at the hearing had informed the High Court that they had no objections and were in fact supporting the application.

The first appellant was of the view that the defamation actions did not involve novel and complex questions on the laws of libel and slander and that the defences of justification, fair comment and qualified privilege had been successfully argued in a number of similar cases by eminent local advocates and solicitors. Thus, there was no reason for the respondent to come into the picture. Learned counsel for the other appellants voiced the same view.

Following the arguments, despite the respondent's otherwise impressive academic record, the learned High Court judge (Faiza Tamby Chik, J) had on 27 September 1999 dismissed the applications.

In the appeal before the Court of Appeal, the decision on 27 June 2001 was divided. Haidar Mohd. Noor, JCA (as he then was) and Abdul Kadir Sulaiman, JCA allowed the appeal while Abdul Hamid Mohamed, JCA dismissed it.

The majority judgment of the Court of Appeal stressed that the fate of the application by the respondent depended entirely on the interpretation of s. 18 of the LPA. The relevant part of that judgment reads:

> So as to harmonise the interests of the advocates and solicitors of Malaysia with the wishes of a particular litigant who desires to retain a particular foreign lawyer, certain stringent conditions are imposed by section 18 upon foreign lawyers as so spelt out in sub-section (1)(a) thereof. If, however, this foreign lawyer meets the stringent conditions imposed by the sub-section, there should not be any grouse on the part of the local advocates and solicitors for giving way to this foreign lawyer because the qualifications or experience is of a nature not available amongst them. The court having satisfied of the qualifications or experience required, is then empowered to admit to practise as an advocate and solicitor this foreign lawyer to represent the particular litigant in respect of any particular case this foreign lawyer is called upon to represent. However, before admitting him, sub-section (3) thereof requires the court to have regard to the views of each of the persons served with the applications. In the instant case before the learned judge, the views of the two bodies concerned with the promoting and safeguarding the interests of the local advocates and solicitors ie, the Bar Council and the Kuala Lumpur Bar Conmiittee, are of utmost importance in assisting the judge to make a decision as to whether the appellant should be granted his applications. But for extraneous reason, the learned judge ignored their views and decided to rely on the general assertion of the Attorney General and the plaintiffs that the cases are of ordinary types without having regard to the substance and the evidence supporting the applications. Unless the stand taken by the said two bodies representing the local advocates and solicitors are suspect, which we do not think so, they are in a better position to assist the court in determining the fate of the applications of the appellant.

Leading senior federal counsel in the Court of Appeal, however, while contending that the qualifications or experience of the respondent was not their main objection, pointed out that in the light of the words "if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court" appearing in s. 18 of the LPA, it implies that the respondent must first meet the requirements of s. 11(2) of the LPA.

At this juncture, it is appropriate to reproduce s. 11 of the LPA which states:

> 11. **Qualifications for admission.**
>
> (1) Subject to section 14, a qualified person may be admitted as an advocate and solicitor if he:
>
> (a) has attained the age of eighteen years;
>
> (b) is of good character and
>
> (i) has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty;
>
> (ii) has not been adjudicated bankrupt and has not been found guilty of any of the acts or omissions mentioned in paragraphs (a), (b), (c), (d), (e), (f), (h), (k) or (l) of subsection (6) of section 33 of the Bankruptcy Act 1967;
>
> (iii) has not done any other act which, if being a barrister or solicitor in England, would render him liable to be disbarred, disqualified or suspended from practice; or
>
> (iv) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;
>
> (c) is either a Federal citizen or a permanent resident of Malaysia;
>
> (d) has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons.
>
> (2) As from the 1st January 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

On this argument, the majority judgment states:

> We see no merit in the contention because firstly, this section 18 is not of general application. This section makes provisions for admission in special cases applicable to a foreign lawyer whereas section 11 is of general application applicable to either a Federal citizen or a permanent resident of Malaysia as

> so stipulated by sub-section (1)(c) thereof. Secondly, the opening words of section 18(1) itself – "Notwithstanding anything contained in this Act" – takes it out of the ambit of section 11 except that the applicant therein cannot be any person other than a person having the qualification to be an advocate and solicitor ...
>
> Similarly in the instant case of the appellant, by the nature of the applications and the special provisions provided by section 18 of the Act, it cannot be the intention of the legislature to impose the requirements of section 11(2) upon him.

The dissenting judgment of the Court of Appeal touched on the similarity of s. 18(1) of the LPA to s. 8A of the Advocates and Solicitors Ordinance 1947 (hereinafter "the Ordinance") which was the forerunner of, and repealed by, the LPA. The relevant extract reads:

> We see that section 18(1) of the Legal Profession Act 1976 now in force is very similar to the provision of section 8A(1) of the Advocates and Solicitors Ordinance 1947. In other words, after about six years after the enactment of the Legal Profession Act 1976, with a different provision regarding ad hoc admission, the legislature decided to re-enact the earlier provision as was in the Ordinance with a slight change i.e. the words "would be a qualified person within the meaning of this Ordinance" were replaced with the words "would be eligible to be admitted as an advocate and solicitor of the High Court".
>
> Why the change in the words "would be a qualified person" with the words "would be eligible to be admitted"?
>
> To my mind, the answer lies in the introduction of the requirement of passing or is exempted from the Bahasa Malaysia Qualifying Examination. That requirement is an additional requirement. The definition of a "qualified person" in section 3 of the Legal Profession Act 1967 was not changed. Prior to the introduction of section 11(2) a "qualified person" was eligible to be admitted provided he fulfilled the requirements of the then section 11 (now 11(1)). But with the introduction of section 11(2) that is not enough. He must also pass or is exempted from the Bahasa Malaysia Qualifying examination. If the words "a qualified person" were retained, that would not cover the requirement of section 11(2) because that requirement is not one of the requirements that makes a person a "qualified person" as defined in section 3. Hence the word "eligible" is used.
>
> What do the words "if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court" mean?
>
> To understand it we have to go back to the normal admission. In the case of a normal admission, to be eligible for admission a person must be a "qualified person", and he must satisfy the conditions of section 11 including being either a Federal citizen or a permanent resident of Malaysia and has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

Leave to appeal to this court was granted on 1 October 2001 only on the following question:

> Whether the prerequisite under section 11(2) of the Act must be fulfilled in order to be admitted and enrolled as an advocate and solicitor of the High Court of Malaya pursuant to section 18 of the Act?

We are aware that although the question posed only makes mention of the prerequisite of s. 11(2) of the LPA, that subsection is in fact an addition to the requirements of s. 11(1) of the LPA before a qualified person can be admitted as an advocate and solicitor.

Section 18 of the LPA opens with the words "Notwithstanding anything contained in this Act" and this surely means, in our view, that the said section is to be read without any regard to any other provision of the LPA. The opening words could easily have been left out if the intention was otherwise.

But the learned senior federal counsel for the first appellant and learned counsel for the other appellants have argued that the words "if he was a citizen of, or a permanent resident in, Malaysia" in that same section implies that "would be eligible to be admitted as an advocate and solicitor of the High Court" stipulates that the requirements under s. 11 of the LPA come into play and consequently the prerequisite of s. 11(2) of the LPA in particular ends up as an absolutely necessary precondition.

A "qualified person" has been defined in s. 3 of the LPA as follows:

> "qualified person" means any person who:
>
> (a) has passed the final examination leading to the degree of Bachelor of Laws of the University of Malaya, the University of Malaya in Singapore, the University of Singapore or the National University of Singapore;
>
> (b) is a barrister-at-law of England; or
>
> (c) is in possession of such other qualification as may by notification in the Gazette be declared by the ... Board to be sufficient to make a person a qualified person for the purposes of this Act;

It follows that to be admitted as an advocate and solicitor, a qualified person must fulfil the requirements of s. 11(1) of the LPA and, since 1 January 1984, the requirement in s. 11(2) of the LPA as well.

We then quickly turn to s. 18 of the LPA again and find that "qualified person" has not been used. Instead it is only "any person". This, at first blush, seems to indicate that a person applying under s. 18 of the LPA need not be a qualified person.

But surely that cannot be so. The person who applies under the special circumstances of s. 18 of the LPA must also be a qualified person. And that is the very reason, in our considered opinion, why the words that follow after "any person" namely "who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted" have been used to denote that that person must be a qualified person as only a qualified person, who is a citizen of, or a permanent resident in, Malaysia would be eligible to be admitted under s. 11 of the LPA.

One can then argue that if that is so, the words "if he was a citizen of, or a permanent resident in, Malaysia," could easily be left out but it is our finding that those words have been included to emphasise that s. 18 of the LPA is catered for a qualified person who do not belong to that category, that is, he is neither a citizen nor a permanent resident of Malaysia.

For these reasons, we would have to disagree with the finding of the dissenting judgment in the Court of Appeal that the purpose of changing the words "would be a qualified person" in s. 8A of the Ordinance to "would be eligible to be admitted as an advocate and solicitor of the High Court" in s. 18 of the LPA was because of the new s. 11(2) of the LPA. That view cannot be correct as Malaysian citizenship or permanent residence was only one of the requirements of s. 11(1) of the LPA and that condition alone does not make the qualified person, which term has been defined in s. 3 of the LPA as a person who possesses the basic legal qualifications, eligible to be admitted as an advocate and solicitor.

The actual reason why the words were replaced was because under the definition of "qualified person" in s. 3 of the Ordinance, as amended in 1970, the person must be a citizen of, or permanent resident in, Malaysia. The definition appearing in s. 3 of the LPA has left out the necessity of being a citizen of, or permanent resident in, Malaysia. We would reiterate that is also the reason why the words "if he was a citizen of, or a permanent resident in, Malaysia" had been included in s. 18 of the LPA.

The necessity for the change, in our view, is because the Malaysian applicant under s. 11 of the LPA and the non-Malaysian applicant under s. 18 of the LPA is already a "qualified person" and to say "would be a qualified person" renders it redundant. A qualified person in either case would be eligible to be admitted as an advocate and solicitor in the High Court if he fulfils the requirements of s. 11 of the LPA, if he is a Malaysian citizen or permanent resident, and those under s. 18 of the LPA, if he was not.

The question is, must the non-Malaysian applicant under s. 18 of the LPA fulfil all the requirements of s. 11, in particular s. 11(2), of the LPA to be considered eligible to be admitted? With the words "Notwithstanding anything

contained in this Act" in s. 18 of the LPA staring at us, it clearly excludes the application of s. 11 of the LPA and so our finding is that the only requirements for the applicant under s. 18 of the LPA are those stated in sub-s. (1)(a) and (b) of that section.

It must be observed that both s. 11(2) and s. 18 of the LPA came about at the same time through Act A567 which came into force on 16 December 1983. Since the coming into force of the LPA on 1 June 1977 until then, there was no provision for a non-Malaysian qualified person to apply to be admitted under special circumstances. If it was the intention of the legislature to make a non-Malaysian qualified person who applies under s. 18 of the LPA to fulfil the requirements of s. 11, which included s. 11(2) of the LPA when s. 18 of the LPA came into force, then the LPA would have expressly stated so either in s. 18 itself or through some other provision in the LPA.

The explanatory statement to the bill making the amendments states as regards the addition of s. 11(2) of the LPA through cl. 9 of the bill as follows:

> Clause 9 seeks to introduce a new provision whereby as from the 1st January 1984 no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the present requirements, he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

As for the amendment to s. 18(1) of the LPA, the explanatory statement at para. 5 explains it in the following manner:

> Clause 14 limits the admission of foreign lawyers to practise as advocates and solicitors in any Court in Malaysia. It is intended that a foreign advocate and solicitor may only be admitted for the purpose of any particular case where in the opinion of the Court he has special qualifications or experience not available amongst advocates and solicitors in Malaysia.

On these considerations, we can only come to the opinion that the application of s. 11, in particular s. 11(2), of the LPA to a non-Malaysian qualified person does not arise as all he has to fulfil are the requirements stated in s. 18 of the LPA itself, a view fortified by the inclusion of the opening words of that section.

We would, therefore, agree with the majority view of the Court of Appeal and dismiss these appeals with costs having answered the question posed in the negative. We would also order the deposits made be paid out to the respondent to account of taxed costs.